

FISCAL NOTE

SB 3043 - HB 3122

March 3, 2000

SUMMARY OF BILL: Permits the state to waive its sovereign immunity for the limited purpose of allowing the state to enter into contracts limiting the liability of certain contractors for damages for negligence in the following circumstances:

1. Sealed bid procurement either has failed to provide a qualified bidder or is not applicable to this procurement under state law;
2. Allowing the limitation of liability is necessary to prevent harm to the state from failing to obtain the goods or services sought, or from obtaining the material at a higher price or from a less qualified bidder, if the state refused to allow a limitation of liability;
3. The limitations and any alternative contract language agreed to are commercially reasonable in light of the risks to the state created by the type of goods or services purchased and the purposes for which they will be used;
4. The state will *not* agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct.

Currently, the state cannot enter into contracts with vendors whose bids or proposals contain any limitation of liabilities.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact - Cost Avoidance - Exceeds \$100,000

Assumes that by allowing the state to limit a contractor's liability under certain circumstances, more vendors will bid and the state would be able to purchase goods and services at a lower price. According to the Department of General Services, the Purchasing Division sometimes has to bypass the lowest bidder because of an inclusion of a limitation of liability and make an award to another bidder whose prices are higher. Other bidders may raise their prices to take this higher risk into account. Such cost avoidance that may occur as a result of this bill cannot be determined, but is estimated to exceed \$100,000.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James A. Davenport, Executive Director

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